IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

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BROGDON ET AL, PLAINTIFFS : 4:23-CV-00088-CDL

VS. : AUGUST 24, 2023

FORD MOTOR COMPANY, DEFENDANT : COLUMBUS, Georgia

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TRANSCRIPT OF SCHEDULING CONFERENCE
BEFORE THE HONORABLE CLAY D. LAND,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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--- PROCEEDINGS ---

Thursday, August 24, 2023 09:24:10

THE COURT: Good morning, be seated. Mr. Clerk, announce out case for this morning.

THE CLERK: Yes, sir, Your Honor. This is a scheduling conference in the case of 4:23-CV-00088 Brogdon et al v Ford Motor Company.

THE COURT: Okay, why don't we just so the record will be clear identify who is present for the parties. We will start with the Plaintiffs.

MR. BUTLER: Good morning, Your Honor, Jim Butler, Ramsey Prather, Larae D. Moore, Dan Philyaw, and Allison Bailey counsel for Plaintiff. We also have Mr. James Dusty Brogdon, the executor or both estates with us today, Missus McCallister, Ms. Glenn, Ms. Andrews, Caroline Schley, and Nick Giles are here with us today.

THE COURT: Okay, and the Defendant.

MR. PEELER: Good morning, Your Honor, Charlie Peeler on behalf of Ford. I've got a couple of folks on our team, Ms. Elizabeth Wright is here. Mike Boorman is here as well.

THE COURT: Okay, when my law clerk informed me that the joint proposed scheduling order had been submitted and there were substantial disagreements among the lawyer as to that proposed order; I thought that certainly cannot be true.

9:34:32AM These are well experienced lawyers well-trained in the Federal Rules of Civil Procedure and this Court's local rules and certainly understand the importance of trying to walk in the other party's shoes a little bit see their perspective and hopefully reach some compromise to keep the case moving along, but apparently that can't be done. So you're going to have the person who knows less about the case than any of you all make those decisions for you, which is part of my job and I'll be glad to do it, but it just seems to me that there could have been a little more conciliation here where we could have avoided this hearing.

Nevertheless, I've read all the papers. I don't know that I've ever had this much paperwork with regard to what jointly proposed scheduling order. Ninety-nine percent of them they are all agreed to or there are some minor differences and I'll decide those, but this is like briefing a summary judgment motion, but I've read it. I'm not going to give the lawyers a chance to argue about every point. We will be here until Labor Day if I did that given the contentiousness of these issues. But this is going to be the schedule.

We are going to try this case. I'm going to specially set it down. I had obviously we've got other matters to handle, other terms of court where we handle other criminal cases, and other civil cases during our standard

9:36:13AM terms of court. And cases like this that I do specially set down have to find a place somewhere else other than during that regular trial turn. The best I can do given what I think is going to be some fairly contentious discovery. I'm going to set this case down for a special setting to begin the trial on February the 3rd of 2025, February the 3rd of 2025. Does anybody at this point in time know whether they have an irreconcilable conflict for that date, February 3rd of 2025? Okay.

The discovery in this case will close on July the 18th of 2024, July the 18th of 2024. There will be no extensions. So understand that here on the front end. You've got plenty of time for discovery. There will be no extensions of that discovery deadline. The reason is the Court has to get the dispositive motion deadline in and the briefing in so the Court can decide any dispositive motions to keep that trial date. It takes a little time to decide those motion so all discovery close on July the 18th of 2024.

Dispositive motions will be due on August the 15th of 2024, August the 15th of 2024. Somebody needs to be taking notes. I'm going to put it on the Defendants to prepare the first draft of this new scheduling order. Submit it to the Plaintiffs. They can tell you what they object to. If you can't reach agreement submit it to me where it succinctly states in the proposed order Plaintiff's position,

9:38:12AM Defendant's position. So all I'll do is say, I adopt Plaintiff's position or I adopt Defendant's position when it is submitted again.

The dispositive motions will be due August the 15th of 2024. There will be no extensions. Make sure the Clerk notes in the record Mr. Clerk that there'll be no extensions of that deadline.

The response to any dispositive motions be due September the 12th 2024. And the reply will be due September the 26th of 2024. There will be no extensions. The Clerk will be notified at that 14-day grace extensions that they can give without asking the judge; that that will not apply in this case. There will be no extension of any dispositive motions or any responses or replies. And if you ask the Clerk for that extension he will tell you that it's noted in the file there shall be no such extensions.

The final pretrial conference in this case will be December the 12th of 2024 at 9:30 a.m. in this courtroom. That will be the final pretrial conference December the 12th of 2024, which will give us time to iron out any final matters before the actual trial in February.

So that's scheduling order. I had one other thing noted on the scheduling order. Any motions to amend pleadings or join parties as a matter of right where you do not have to get the other side's permission and do not have to get leave

9:40:10AM of court, that should be done by January the 18th of 2024. If something comes up after that date that was unforeseeable and you establish good just cause to amend the pleadings then you'll need to file a motion after that date. Before January the 18th of 2024, you can amend as a matter of right.

I'm going to get to the protective order in a moment. Any discovery that was taken -- is it Mill or Mills --

MR. BUTLER: Hill case, Your Honor.

THE COURT: Oh it's Hill.

MR. BUTLER: We call this one Mill because of the decedents.

THE COURT: Okay, Hill case. Any discovery from the Hill case, the Hill v Ford case may be used in this case just as if it were taken in this case. I'm not making any preliminary rulings on whether evidence from that discovery is admissible at trial; whether it's sufficiently comparable to be admissible, but it does not need to be redone and any of that discovery that was taken will be treated just as if it was taken in this case.

There was some reference in the pretrial order briefing about video depositions for use at trial. On all of these determinations I'm going to be guided by the -- this is obvious -- by the Federal Rules of Civil Procedure, the Court's local rules in any local orders the court as issued

such as the Rule 1626 order. When I'm resolving these issues that's what I'm going to be looking and hopefully be guided by a little common sense.

Any video depositions that the parties want to take to preserve testimony at trial just need to be taken pursuant to the rules. And I think those types of preservation depositions can be taken even after discovery has been concluded if its established that those people are not available and you can work out a mutually convenient time with the other side. You shouldn't wait until two days before trial, but my general rule is that if those parties or witnesses are available, which I guess the Plaintiff contemplates proposing. If they are associated with the Defendant they are probably beyond the subpoena power so they may not be available, but if they are available, then under the rules they need to testify live; unless there's some other exception under the rules, perhaps for a witness associated with a party opponent. But I'll be governed by the Federal Rules with regard to that. So I'm not sure really what the dispute is about that or if somebody's just anticipating somebody's going to object to the use of a video deposition, but I generally don't decide that in a scheduling order.

With regard to with regard to motions to compel discovery or the inverse of that, motions for protective orders to be protected from responding to discovery, our Rule

9:44:48AM 1 1626 order makes it clear I think that before filing any such
2 motion the parties need to have a face-to-face good faith
3 conference to resolve the dispute. None of this shooting
4 e-mails back and forth to each other. You can do that too.
5 No Zoom. But before you burden the Court with a motion to
6 compel or a protective order, I require the parties to have
7 certified that they have met -- the lawyers that they have met
8 face-to-face and made a good faith effort to resolve the
9 dispute. I'm not one that says, okay, anytime you've got a
10 discovery dispute call up Mr. Gunn and he'll get me on the
11 phone and we'll hold hands with you all and help you work it
12 out; that's just not -- My predecessor would just faint if he
13 thought lawyers even did that these days but apparently that's
14 the thing that a lot of lawyers like to do. Just call him up
15 and see if we can't work this out informally; that makes it
16 easier apparently.
17 MR. BUTLER: Your Honor, one question. Just to make
18 sure I've got my notes right. You did say no Zoom,
19 face-to-face in person.
20 THE COURT: Yes, sir.
21 MR. BUTLER: Thank you, Your Honor.
22 THE COURT: Are all the lawyers here from Georgia?
23 MR. PEELER: No Ms. Wright is from Cleveland, Ohio.
24 THE COURT: Since the case is filed in this district
25 if you're going to be the one to show up at those meetings

9:46:28AM you'll need to come not necessarily to Columbus, but somewhere in the district. If you want to come to Atlanta or go over and check out Savannah where Mr. Butler is that's fine with me.

MS. WRIGHT: Happy to travel, Your Honor, happy to come here.

THE COURT: I'm not going to make them have a conference in Ohio or wherever you are.

MS. WRIGHT: No, happy to come here.

THE COURT: As far as electronically stored information, I've read over the position or the process that Ford has proposed; it's consistent with what I've done in other cases. I don't see a problem with that process. So we will follow that process. I'm going to allow each party, the Plaintiffs' collectively and the Defendant separately to propound 50 additional interrogatories, 50 interrogatories, 25 requests for production and 25 requests for admissions.

MR. BUTLER: Your Honor, just for clarification you said 50 additional; do you mean 50 total?

THE COURT: I mean 50. What I was thinking about, 50 in this case, but you can use what you had in the Hill case so it would be in addition to that. Unless you all contemplated those being factored into this number when you all made this request.

MR. BUTLER: We've already done what 15 runs?

9:48:13AM THE COURT: I believe the Plaintiffs requested. Was your request for 50 in addition to that or to include that?

MR. BUTLER: Fifty is fine, Your Honor.

THE COURT: Including whatever you've already done.

MR. BUTLER: Yes, sir, that was my question.

THE COURT: Is that okay with the Defendants?

MR. PEELER: The Hill interrogatories count against that 0; is that what we're saying? I just want to make sure I understand.

MR. BUTLER: That gives us less than zero.

THE COURT: The Plaintiff does not want the 50 Hill to count against the 50. You want 50 in addition to whatever you've got in Hill, correct?

MR. BUTLER: Yes, sir.

THE COURT: Okay, I do think that was misstated previously. Yes, it will be in addition.

MR. PEELER: Okay.

THE COURT: I'm going to get to the protective order in just a minute, but I'm having a hard time understanding one fundamental issue. If information has previously been publicly disclosed in a prior trial for example, then it doesn't seem to me that that information has any type of continuing privilege associated with it. So it may not be discoverable for some other reason or it may not be admissible, but I don't see how it is privileged if it has

9:50:07AM been previously disclosed publicly. Is the Defendant taking that position or am I misunderstanding?

MR. PEELER: In response to the Plaintiff's argument is that if it was used in evidence at the Hill trial, and since that trial was available on a pay per view internet system, therefore all confidentiality is waived. Our position is that that doesn't really characterize the true extent of the disclosure. So all of those documents that were admitted into evidence --

THE COURT: That's my point. If there has been a public trial, and documents were admitted in that public trial, and those documents were therefore available not only to the people who observed the public trial but were on a public docket because they were admitted into evidence. We don't have Star Chamber courts where things get hidden, then how can those documents that have already been publicly disclosed maintain a privilege of nondisclosure? The basis for nondisclosures is to protect items that are proprietary or otherwise privileged from public disclosure. But once they've been disclosed why is the continued protection necessary?

MR. PEELER: I think the distinction is that those documents as I understand it -- and Mr. Boorman will correct me if I say it wrong -- but those documents were admitted into evidence. They are sealed. They are not available on the public docket. The only thing that was made publicly

9:52:06AM available was the two or three lines on a particular document that a witness was questioned about.

THE COURT: Okay, so all of the document has not been publicly disclosed.

MR. PEELER: Correct. So to say that --

THE COURT: That judge ordered that they not be publicly disclosed.

MR. PEELER: Right. There is a protective order in that case that governs the treatment of documents marked confidential, including some of the trail exhibits that have been tendered and admitted. Currently, that protective order is in place so Plaintiffs are challenging that and the Defendants are opposing that challenge, but that has not been ruled on. So as it stands today those documents are currently protected under that --

THE COURT: Okay. Is that correct Mr. Butler?

MR. BUTLER: No, sir. I think context may be helpful to the Court, which is why in too many pages of typed papers we submitted to the Court we said that several times. Ford should have filed a motion for protective order. It is the common thing theme in this cases is the Defendant tries to avoid falling a motion for protective order for various reasons I won't get into because that's argument. I woke up at 5:00 this morning thinking about it. I've been doing this for 35 years. Context. Thirty-five documents Ford documents

9:53:31AM were admitted in the second Hill trial into evidence, admitted into evidence not just tendered. There may have been a few that were tendered but not admitted. I don't remember. Ms. McCallister did a count. Of those 35 admitted Ford documents in the second Hill trial, 18 had a confidential stamp on it, 18. Of those 18, when Ford opposed our motion to modify the protective order in Hill, Ford only claimed that eight were still subject to any claim of confidentiality, according to Ford. Now, we haven't gone back and checked the first Hill trial. It's probable that the same Ford documents were admitted in the first Hill trail because at the time of mistrial in that case we had rested. I assumed that all 35 or close to that were admitted in the first Hill trial too.

So these documents have been admitted and displayed, not just quoted from but displayed in open court in the second Hill trial for sure. Most of them if not all of them in the first Hill trial as well. Both times filmed by Court TV CVN, Courtroom View Network, and distributed. So it's not correct to say that only pieces of them were read from. The documents were admitted into evidence.

THE COURT: If that's the case why are they now under seal? If it's just a matter of, okay, it's all out there in the public; why would the judge in that case --

MR. BUTLER: I don't believe he had. I'm trying to remember what all happened with that. But my point is --

9:55:19AM THE COURT: If a member of the public went down to the county to look at this document, would they find those documents under seal so that they could not look at them or would they be a matter of public record?

MR. BUTLER: That I cannot remember, Your Honor.

THE COURT: Ford says they remember and they say that they were filed under seal. Mr. Boorman represented that he would be the one who would know from Ford's perspective. Are those documents under seal or are they publicly on the docket?

MR. BOORMAN: We actually had a lawyer from our office go and physically check. They are not on a public docket.

THE COURT: Where are they?

MR. BOORMAN: We believe the judge has them and they are under seal. They are not on the public docket.

THE COURT: Was there an order in that case that placed them under seal even after they were admitted into evidence?

MS. WRIGHT: Your Honor, as part of our protective order, which Plaintiff agreed to in the Hill case, a part of that order says that they keep their protection. So it was our understanding that we all agreed that they were going to stay as protected. So now after that agreement was made with the Plaintiffs in the judged signed an order. We've made it

9:56:34AM through two trials. Now, the Plaintiffs have filed a motion to amend that protective order, which is currently being considered so Judge --[inaudible]--. This issue is directly in front of Judge -- We are waiting for his decision.

MR. BUTLER: Your Honor, that's not correct. The Court's question was: Was there an order entered sealing those documents even after they were admitted into evidence with the second Hill trial. The answer to that question is, no.

THE COURT: Well, is the judge down there considering whether those documents should be under seal or not?

MR. BUTLER: We've got a motion to modify and as to the 35 Ford documents admitted in the second Hill trial, Ford has in response to that motion to modify claimed that it wants eight of them to continue to get the treatment. There are several things to have done in this case -- unless this protective order thing was all about delay -- was submit those eight to the Court in camera.

THE COURT: Well, quite frankly, I don't see the urgency of me deciding this particular issue since you've got the documents in your discovery. It's not going to slow down your discovery in any way. And the fact that they cannot be publicly disclosed at this point in time, how does that hinder your prosecution of this claim in this case?

9:58:10AM MR. BUTLER: Your Honor, you make an excellent point. I don't think it does. We simply responded to this protective order.

THE COURT: This is what I'm going to do with regard to the protective order. Obviously, we get these all the time and 99 percent of them the parties are able to reach kind of agreement with regard to the process; what should be protected in the process for effectuating that and the process for challenging that. And I am aware that in a fairly recently filed case in this Court, Felicia Christian versus Ford; which is our case number 4:22-CV-00062 in which I think Mr. Boorman you were involved in that case for Ford, correct?

MR. BOORMAN: That's correct, Your Honor.

THE COURT: The plaintiff in that case is represented by the Beasley Allen Law Firm, which I've had some experience with in this court and have found them to be zealous, reasonable lawyers who I have never found to do anything that would be harmful to their client. And a couple of months ago -- I think that's a rollover case also. It doesn't involve pickup trucks. It may involve a Bronco or some other vehicle, but it doesn't involve a pickup truck. I got from those lawyers and the lawyers in this case from Ford a sharing non-sharing protective order that they consented to without any involvement of the Court. And having reviewed that then and having reviewed it now I don't find that order

10:00:27AM unreasonable at all. I am just inclined to enter the same or very similar order in this case. My question to you Mr. Boorman, is the stipulated sharing and non-sharing protective order that Ford submitted in this case the same as the one that I signed in the Christian versus Ford case? If there are any changes I want to know what they are. Any differences?

MR. BOORMAN: Yes, Your Honor, they are very similar.

THE COURT: That's what I don't understand.

MR. BOORMAN: Yes, Your Honor.

THE COURT: How are they different? How is this one different?

MR. BOORMAN: Your Honor, I would have to do a line by line which I can do today and send it to everybody, but I just don't want to represent to the Court --

THE COURT: Would there be any reason given the subject of this litigation and that litigation for a protective order to be different in this case than in that case?

MR. BOORMAN: No, Your Honor. If it makes it easier for the Court, we'd be happy to submit that verbatim. Just take Christian off it and put that on. We would absolutely be fine with that if it makes it easier.

THE COURT: Mr. Butler, I don't want to know all the

10:01:52AM different agreements with their submitted order, but what is the major heartburn that you've gone with regard to their order? What is the major thing you don't like about it? Apparently Beasley Allen -- I'm not saying you've had more success likely than Beasley Allen. I'm just saying in my experience with them they've been good and zealous lawyers in prosecuting their claims. What is it here that you don't like or think unfairly prejudices your client?

MR. BUTLER: Well, if the Court would indulge me first let me point out that we throwing no shade on Beasley Allen.

THE COURT: Correct.

MR. BUTLER: My firm has agreed to similar protective orders in the past. We did so in the Hill case. We've done that because when you're dealing with automakers, to get discovery going at all you have to bow down and knuckle under and agree to those orders. I've never liked them. But to answer the Court's question directly in the context of this case, it's just so unnecessary.

In the filings we've made, we said that we thought it was unnecessary. Now that the Court has ruled that discovery in Hill is the same as deemed discovery in this case it becomes abundantly unnecessary because we're not going to have to sort through a trainload literally, of Ford documents like we did in the Hill case. We will just use what we've

10:03:16AM got. And this is going to be precious little written discovery in this case for production of documents.

THE COURT: You're not going to be prejudice in anyway by the entry of that order.

MR. BUTLER: The problem is that once again, whenever another lawyer calls, I probably ought to let Ms. McCallister answer the question.

THE COURT: That's not really my concern. I understand lawyers like to share stuff from one case to the other. I'm focused on giving you and the Defendants a fair trial in this case.

MR. BUTLER: It's crucial though, Your Honor, because without sharing there's no way to prevent a Defendant from concealing evidence; and that was proved in this case and the Hill case. The only way we found about the ERSP, Enhanced Roof Strength Program for super duty trucks, is because our lawyer in Alabama with a sharing protective order told us about it. Ford concealed it so the sharing non-sharing stuff is really important.

If Ford is given the power to stamp on a particular document, Ford decrees this was non-sharing; which they do without any explanation or reason, then every time we contemplate sharing documents with another lawyer Ms. McCallister has to go through it and make sure which document it is. It becomes an onerous burden. There's no articulation

10:04:46AM by Ford why Ford is entitled to be able to decree that a particular document is non-sharing with all the stuff that has been filed with you they never articulate a reason for that. Now, if they've got a document then there is no reason to label some documents non-sharing. The other problem with it is this whole concept that some of these documents are entitled to "confidentiality treatment" is we respectfully submit baseless.

THE COURT: Well, the problem is this, some may be entitled to protection and some may not be. So the question is what is the most efficient, fair process to have in place in the protective order to make the determination if you find or you believe that they have asked for a document to not be shared when it should be? The Court can't just say, okay, you can share everything because there could be documents that are proprietary and confidential that should not be shared. So the question is what's the best process to get to that issue if it arises? There's go to be some process. It can't just be no protective order at all because in the past your experience has been that they try to over protect. There has got to be some process in place.

MR. BUTLER: I agree Your Honor. I was trying to get back the context here.

THE COURT: I understand your context. Your context based on your experience is that they are going to seek to

10:06:39AM overprotective.

MR. BUTLER: I was going to go to the next context argument, Your Honor. That is that there are two categories of documents that are pertinent for Plaintiff in this case. One is documents about the initial roof design, which was done in '94 and '95. Those documents are almost 30 years old. They were in a 1999 model year super duty truck first sold in the fall of 1998. So the thing has been sold for 25 years. If a competitor wanted to know something about those documents it could reverse engineer the roof; it's had 25 years to do so. I don't know why any competitor would want to reverse engineer this particular roof, but if they wanted to they could have done so.

The second category of documents are documents about the enhanced roof, a project for super duty trucks. That project occurred in 2005-2006. Going back to the first category, Ford discontinued the use of the 1994 roof design seven years ago. The second category of documents is the ERSP documents. Those documents are now 17 years old.

THE COURT: What you're asking me to do is to preemptively decide whether something should be protected or not even before there's a protective order filed by the Court.

MR. BUTLER: No, sir, not at all.

THE COURT: You're asking me to take this category of documents and find that they should not be able to assert

10:08:14AM privileges to those documents in advance.

MR. BUTLER: No, sir. No, sir, not at all.

THE COURT: Okay.

MR. BUTLER: It's fine with us. Ford can stamp whatever it wants to as confidential and we will challenge it. And Ford wants us to explain to the Ford why we challenged it and that's not appropriate. They're not the judge. If they want to stamp a document confidential, this document they claim is confidential, and we want to challenge it. Then we challenge it and they got to file a motion with the Court.

THE COURT: What's the process Mr. Boorman in the order that I've already entered in a similar case? What's the process there?

MR. BUTLER: His process calls for a hearing. His process says the Ford process --

THE COURT: There isn't going to be a hearing until after you all have met in good faith to resolve it face-to-face.

MR. BUTLER: His process calls for him to do that. We have to have a conference and I am missing a step. Oh, the parties have to discuss coming up with an alternative procedure, which is another issue we have to address, and then there has to be hearing. That's another problem we have with Ford's pattern for a protective order. It's just so cumbersome; there's no reason for it generally speaking.

10:09:43AM THE COURT: I'm assuming that the Defendant's lawyers are going to have a substantial good-faith basis for contesting disclosure of some document as far as it being confidential; it's not going to simply routinely stamp --

MR. BUTLER: Your Honor, most of the documents that were produced in Hill were stamped confidential or subject to protective order. What percentage Ms. McCallister? It was a lot of them.

THE COURT: Were there rulings by that Court that they weren't?

MR. BUTLER: In the Hill case there were five motions to compel, four motions for sanction, 86 motions in limine. No, sir, Your Honor. We gave up on this fight with Ford in the Hill case because we didn't have time to fight it. And there's not going to be a fight in this case because you've already ruled the Hill discovered is deemed taken in this case; it's not going to be very more documents.

THE COURT: I've got to make sure that if there is a fight on it that it's in the proper posture for me to decided on it and today is not that posture in the protective order. There just needs to be a process in place so that it can be presented if it needs to be and then I can rule on it. But I'm not going to be very patient if somebody is marking documents as confidential when there's no real substantial basis to support it. Mr. Boorman.

10:11:13AM MR. BOORMAN: Yes, Your Honor.

THE COURT: And if I end up signing the protective order that I've signed in the other case, and that becomes too burdensome and ineffective, then we will amend the protective order.

MR. BOORMAN: Yes, sir.

THE COURT: Because we're not going to get bogged down in a lot of these little side bites that are going to slow us towards our goal. I've already provided a generous discovery period and we're going to get it done within that period.

MR. BUTLER: Your Honor, just to respond to that briefly. You have given us more discovery period then we're going to need because we're going to retry the Hill case with an updated list of lawsuits and updated documents. We've got the documents we need except for some update.

THE COURT: Did you file motions for summary judgment in every one of these cases?

MR. BOORMAN: In many of the cases Your Honor, we do.

THE COURT: Do you anticipate one will be filed in this case?

MR. BOORMAN: We anticipate we will file a motion for partial summary judgment at least. Yes, Your Honor. Your Honor, one thing I wanted to raise that came up in the Court's

10:12:19AM discussion. All we want is process. We want to be able to mark documents with a confidential protection and then they can challenge it; and have process that we can meet and confer. If we can't come to an agreement, come to the Court and then the Christian protective order; that process is in paragraph four.

THE COURT: Send the Christian protective order to Mr. Butler. You are already on your process. Send it to him by 5:00 p.m. tomorrow so he can review it. And I'm going to have you all submit a joint proposed scheduling order that incorporates my schedule, and my rulings this morning, and the final protective order by August 31, which I think is a week from today. Submit those to the Court and Mr. Butler, if you have any objections other than those that you have already stated to the Christian order, which is the one I'm inclined to sign, then notify them what they are and they'll include that in what they submit.

MR. BUTLER: Your Honor, can we change that deadline to August 30th? I'm going to be traveling on August 31st.

THE COURT: Yes, August 30th will be fine.

MR. BUTLER: One other thing Your Honor. Pursuant to the first order the Court entered in this case, Plaintiff's expert disclosures are due September 18. Looking at my notes, did you tell us when expert disclosures are due?

THE COURT: I did not. Typically, the parties can

10:14:25AM agree to that once they know what the discovery period is going to be. Can you all agree to that or not?

MR. PEELER: We've tried already one time Your Honor. You've got some strong language in your Rule 16 order that comes out about not amending the initial time for expert disclosures that you've set out in that order. We would ask that Plaintiff disclose their experts --

THE COURT: Listen, I am flexible on -- Generally, I should say I would normally defer to the parties if they could come up with an expert disclosure schedule. As long as the date I'm concerned about is the end of discovery, the final end of discovery. If you all can come up with a better disclosure of expert schedule, as long as it's done so that the discovery deadline is not expired then it will be fine with me, but I'm not really anticipating that you all are necessarily going to reach agreement on what that should be so we'll decide it today.

MR. PEELER: The Defense had proposed, which was similar in other cases, we proposed an August 15th discovery deadline. Your Honor has backed that up a month. So the Defendant could live for sure with the February 15, 2024, Plaintiff expert disclosure; an April 15 Defendant expert disclosure; and then a June 15 rebuttal disclosure. So that allows everyone to gather up the facts they need.

THE COURT: Say those dates again so the Plaintiffs

10:16:14AM that can write them down and digest them.

MR. PEELER: The Plaintiff's expert disclosures would be due February the 15th. The Defense would be April 15; and then rebuttal would be June 15.

THE COURT: And all discovery closes July 18th.

MR. PEELER: Correct.

THE COURT: Any heartburn over that schedule for disclosure of experts Mr. Butler?

MR. BUTLER: What was the July date Your Honor?

THE COURT: The final discovery date the discovery closes July 18th.

MR. BUTLER: Yes, sir. Let me look at something right quick, Your Honor. Frankly, I don't know why anybody needs that long. And I don't know why the Defendant needs two month to identify its experts when they have defended about 200 of these cases. They've already got their experts, at least some of them. They had four --

THE COURT: Let's take this one by one. When will the Plaintiff be ready to disclose its experts? I guess from what I'm hearing you already know who they are today. Are you just going to use the same -- I guess you'll have different medical experts. I don't want to speculate about that. When does the Plaintiff wish to disclose his experts?

MR. BUTLER: The dates that Mr. Peeler suggests although I don't know we need that long.

10:18:35AM THE COURT: All right, if you all don't want that long then we'll move it up. Tell me when you want to disclose your experts.

MR. BUTLER: The problem I'm seeing here is when do we depose these people?

THE COURT: That's what I understand; it's not going to be done after July the 18th.

MR. BUTLER: That's the problem.

MR. PEELER: The reason we have the 60 day --

THE COURT: If the Plaintiffs want to move it up, when can you reasonably name your experts?

MR. BUTLER: Plaintiff.

THE COURT: Yes.

MR. BUTLER: We can do it by February 15th for sure.

THE COURT: Can you do it before then?

MR. BUTLER: We could but Ford has insisted thus far that it depose all the Plaintiff's experts before it discloses its experts. So the question then arises --

THE COURT: If we move Ford up then we probably need to move Plaintiff up a little bit. I'm asking you when is the earliest reasonable date for you to name your experts; is it February or is it earlier?

MR. BUTLER: We could do it earlier.

THE COURT: That will help because that will move

10:19:35AM Ford up corresponding.

MR. BUTLER: As a practical matter the crucial question is: Is Ford going to be allowed to depose all of Plaintiff's experts before it discloses any of its own experts? Because that affects that dates and the timeline. Because you get into another problem then with this schedule, if Plaintiff's rebuttal experts --

THE COURT: Would the Plaintiff prefer that that happens so that when you depose Ford's expert you will go ahead in one deposition and learn their criticism of your experts, which they likely will present at trial.

MR. BUTLER: Doesn't matter in this case.

THE COURT: Okay. You tell me the earliest reasonable time that you want to disclose your experts and then we'll back Ford up a little bit.

MR. BUTLER: I don't know. What do we think? We were going to be ready in September because that's what the Court's order told us to do. We will back it up and have more time and have more polished disclosures. January, back them all up a month. I don't know what days of the week those are.

THE COURT: We will find a weekday in the middle of January.

MR. PEELER: Your Honor, the dates that we propose take into account that all of these experts are going to have to rely on a lot of the facts that are in discovery specific

10:21:00AM to this case. The reason that we pushed it back to February 15; and then 60 days in April 15; at then 60 day June 15, all before the close of discovery is to allow all of the fact discovery that needs to happen to occur so that the experts can form their opinions on the available facts and then not have to go back later and revise opinions because additional facts are discovered. So that's the way that we staged it and the reason we put the 60 day block between Plaintiff, Defendant, and then Plaintiff, rebuttal is to allow for a disclosure, deposition of the expert disclosure, by Defendant, a deposition by the Plaintiff, and then a rebuttal by the Plaintiff. So from our standpoint that's going to be the most efficient way to handle it. So whether it's 30 days one way or the other I don't think that should control is so much as how can we set this up to get all the facts that the experts need in order to make their disclosures to not have to continually revise them.

MR. BUTLER: Your Honor, I have to respond to that. Number One, after 40 or 50 e-mails, we finally completed on August 1 and 2, exhumations and autopsies of Mr. and Ms. Mills whose bodies were taken in body bags to the hospital in Bainbridge for Ford's radiologist to do all types of imaging: x-ray, CT, MRI. They've got all that.

Ford has affidavit signed by all of the key scene witnesses, the flight nurse who showed up right behind the

10:22:45AM Mills, two Troopers, EMTs, eight affidavits I think that's right. Those people are all around who've been available to Ford and Ford is going to have many months from today if they haven't already talked to some of the witness to go talk to them. Ford did the same thing in the Hill case and talked about how they needed to depose all these people. In the Hill case there were not as many scene witnesses as this one, but there were a dozen 15, Ford took two depositions. The truth is we don't need all this time but that's got nothing to do with the question --

THE COURT: What are your dates again Mr. Peeler?

MR. PEELER: February the 15th is the Plaintiff's expert disclosure, April 15th is Defendant's expert disclosure with depositions occurring in that 60-day window, and then June 15 is Plaintiff's rebuttal with depositions occurring within that 60-day window.

THE COURT: That's not going to be a 60-day window; there's going to be a 30-day window.

MR. PEELER: Yes, Your Honor, sorry for rebuttal it is 30-days. Nothing prejudices the Plaintiff in the schedule.

THE COURT: In light of my schedule, which is a little more expensive than what the Plaintiff's preferred, this disclosure of expert witnesses nobody is going to be prejudiced by this schedule because everything is still going to be finished by July 18th. So I'm going to --

10:24:27AM MR. BUTLER: We would ask respectfully to move it up a month. I've got the dates on the calendar. We would suggest these dates. Plaintiff's disclosures by January 11, Defendant's disclosures by March 7, Plaintiff's rebuttal by May 9; that keeps the same two-month interregnums. We just moved it up a date to make sure that we don't get down here and --

THE COURT: I don't have a problem with that other than what I don't want to happen is some expert -- There be some discovery learned after the Plaintiff's disclosure and their depositions that could alter their opinions and then you've got another deposition of them to find out whether they've got any supplemental changes in their opinions prior to the trial. Now, suppose if that happens the ruling could be you're stuck with what you opined to in February; and you can't change your mind or add anything. But by at least adding another month it gives you more time to make sure all the experts have got all the facts they need.

MR. BUTLER: Appreciate that observation by the court. I can say that as a practical matter the Defense experts opinions will change after the deposition.

THE COURT: It will.

MR. BUTLER: It will.

THE COURT: Regardless.

MR. BUTLER: One of the reasons will be that they

learn something after the deposition that they didn't know before. So in an academic sense the Court's absolutely correct. In a practical matter it doesn't make any difference.

MR. PEELER: Your Honor, nothing prejudices the Plaintiff --

THE COURT: I suspect as a practical matter the one-month expert schedule isn't going to matter either.

All right, Plaintiff's disclosure of experts, make sure this is included in the scheduling order is February 15th; Defendant's disclosure April 15th; Plaintiff's rebuttal disclosures June 15. And Mr. Peeler I don't want to hear you all coming back and complaining that 30 days was just not enough time to take the deposition that Plaintiff's rebuttal expert. Our schedules are so busy we just couldn't get it done in 30 days. Plaintiff's have offered to do this so that you will have 60 days to do that and you've insisted on 30.

MR. PEELER: Understood.

MR. BUTLER: Your Honor, can I have a moment? I just remembered a possible scheduling conflict. It appears, nevermind. I was, misapprehending the dates. Our rebuttal is June 15th. I'll be back by then if there are any rebuttal experts. Thank you, Your Honor.

THE COURT: Okay, let's make sure everybody

10:28:13AM re-checks their calendars again for February of 2025 because that date is going to be immovable because I can't move it earlier than January because that's when try criminal cases; and I can't really move it to March because I need to leave that open for other criminal and civil cases. I don't want to push it off any farther so before we leave here let's just make sure you are all available February 2025.

MR. BUTLER: From Plaintiff's perspective I can say that will trash one more quail season for me, but that's all right. I'm used to it.

THE COURT: You just need to retire if you want to go quail hunting.

MR. BUTLER: My buddy Eddie Garland says he will retire when the phone quits ringing or he can't hear it; that's my policy, Your Honor. There's nothing I'd rather be doing on February 3rd than being in this courtroom trying this case.

MR. PEELER: February 3rd is great with the Defendants Your Honor.

THE COURT: Okay, what I expect to happen then is for Defendant's Counsel to prepare a revised scheduling order with my rulings today and with this schedule. Mr. Butler, get it to him by Monday at 5:00 along with the Christian protective order Monday at 5:00. And then Mr. Butler take a couple of days to review it. If you have objections still

10:30:06AM tell them what they are and put that in the order where there's a section where there is disagreements. What I'll do is read the two positions and I'll say I adopt the Plaintiffs or I adopt Defendants, but don't you repeat all this other briefing. This conference I think is helpful and it should narrow things down as far as my expectations. And then get that back to me, both orders for me to sign August 30th I guess.

MR. BUTLER: Yes, sir.

THE COURT: Is there anything major that needs my input that we haven't discussed at this time?

MR. PEELER: Nothing from the Defendant, Your Honor.

THE COURT: How long do we think this trial will last?

MR. BUTLER: Your Honor, the first Hill trial, mistrial was declared on Friday morning I think it was the third week of trial. The second Hill trial lasted exactly three weeks. I can't estimate what Ford is going to do, but I would say three weeks.

THE COURT: Let me get Mr. Boorman's assessment of how long he thinks.

MR. BOORMAN: We agree with two to three weeks, Your Honor.

THE COURT: Okay, thank you. Yes, sir.

MR. BUTLER: Something in response to the Court's

10:32:22AM question Your Honor.

THE COURT: There is no surviving Plaintiff, correct?

MR. BUTLER: They are both dead. Mr. Mills lived for nine days in the hospital in Tallahassee and then he died. Nothing further from the Plaintiff, Your Honor.

THE COURT: Okay, I look forward to those two orders and hopefully this thing will stay on track. And based on Mr. Butler's assessment this discovery should be conducted at a leisurely pace since I've given everybody so much time. Let's try to get as much done upfront as we can so nobody's rushing around at the last minute looking for some kind of extension. We're not going to change this. We're going to trial in February; that's plenty of time, okay. We're adjourned.

(Proceedings concluded.)

END OF RECORD

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CERTIFICATE OF OFFICIAL REPORTER

I, Joan Drammeh, Federal Official Court Reporter, in and for the United States District Court for the Middle District of Georgia, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 28th day of August, 2023

Joan Drammeh

JOAN DRAMMEH, CVR, CCR

FEDERAL OFFICIAL COURT REPORTER

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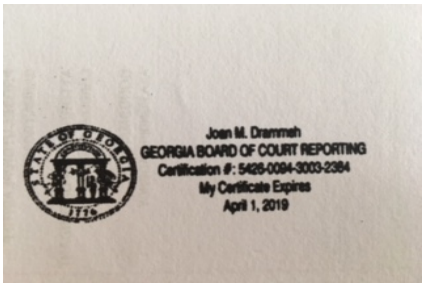

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